OCBC BANK (MALAYSIA) BHD

v.

SETHU AMBALAGARA THEVAR

COURT OF APPEAL, KUALA LUMPUR
LAMIN MOHD YUNUS PCA
AHMAD FAIRUZ JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: A-03-12 OF 1997]
22 JUNE 1998

BANKRUPTCY: *Notice - Whether must be quantified and specified - Rationale*

BANKRUPTCY: *Notice - Settlement - Payment tendered as per sum stipulated in notice - Whether petitioning creditor entitled to reject payment - Whether judgment debtor deemed to have committed act of bankruptcy - Whether petitioning creditor entitled to petition for receiving order - Whether judgment debtor actually solvent*

BANKRUPTCY: *Notice - Debt - Petitioning creditor claiming that debt is more than sum stipulated in notice - Interests - Whether notice should have been withdrawn - Whether new notice should have been filed - Whether petitioning creditor entitled to reject payment by judgment debtor as per sum stipulated in original notice*

BANKRUPTCY: *Notice - Negotiations between debtor and creditor - Whether there should be any more negotiations after notice has been served on debtor*

BANKRUPTCY: *Adjournment - Bankruptcy Act 1967, s. 127 - Not exceeding one month - Whether a strict rule - Whether parties can agree to adjourn - Whether court will allow - Exceptions - Opposition to petition*

As at 5 August 1993, the respondent/judgment debtor owed the appellant/petitioning creditor the sum of RM55,211.37. This sum arose from a consent judgment entered on 22 June 1992. The petitioning creditor took out a bankruptcy notice ('the notice') and served it on the judgment debtor on 28 September 1993. In the notice it was stated that the judgment debtor owed the petitioning creditor the sum of RM55,211.37. The petition however was not heard within the time frame as provided for by s. 127 of the Bankruptcy Act 1967, reason for the delay being that there were negotiations between the parties.

Preceding the actual hearing of the petition before the senior assistant registrar ('the SAR') the judgment debtor filed an affidavit to oppose the petition claiming that he was solvent. When the petition finally came up for hearing, the judgment debtor tendered two banker's drafts for the total sum of RM55,211.37 which was the amount stated in the notice. The petitioning creditor refused to accept the banker's drafts stating that at the time when they were tendered, the amount of the debt due under the notice had been inflated due to the non-payment of interest and as such the amount due on the date when the drafts were tendered was RM99,797.89. The SAR dismissed the petition on the ground that the judgment debtor was solvent. On appeal to the High Court, the judge upheld the decision of the SAR. Hence the present appeal.

The issues for consideration were: (i) whether the judgment debtor was solvent; and (ii) the issue of delay of two years from the time the notice was served to the time when the petition was heard.

Held:
Per Mokhtar Sidin JCA

[1] A bankruptcy notice must be quantified and specified – the reason being that a judgment debtor must be given the opportunity to raise the sum within the period stipulated in the notice. If a judgment debtor is able to settle the full amount stated in the notice, then he has not committed an act of bankruptcy. If he tenders the full amount as stated in the notice, the petitioning creditor is obliged to accept that amount as full settlement of the sum owing under the notice and the petitioning creditor cannot petition for a receiving order. If the petitioning creditor refuses to accept the amount he does so at his own peril.

[2] When the judgment debtor tendered the banker's drafts amounting to RM55,211.37 which was the sum stated in the notice then, the sum in the notice had been satisfied. The petitioning creditor had no right to refuse to accept those banker's drafts since the full amount in the notice had been tendered. That payment proved that the judgment debtor was solvent. It did not matter whether the petitioning creditor accepted them or not; the obligation on the part of the judgment debtor under that notice had been met and he had not committed an act of bankruptcy. Since he had not committed an act of bankruptcy, there was no right given to the petitioning creditor to present the petition for a receiving order.

[3] If the petitioning creditor wanted a figure higher than the one in the notice, it should have withdrawn the notice and file a new notice stating the new amount and serve it on the judgment debtor. By doing so, the judgment debtor would have to settle the new amount under the new notice. Until that was done, the amount due from the judgment debtor was the amount in the notice, that was RM55,211.37 – which was tendered by the judgment debtor through the two banker's drafts.

Per curiam:

[1] After a notice has been served on a judgment debtor, no negotiations whatsoever should take place anymore. The bankruptcy proceeding is the last resort open to a creditor because all other avenues to recover the debt has been closed. Hence no negotiations should take place. Once the notice is served, either the judgment debtor pays the amount in the notice in full or he faces the consequence of being made a bankrupt.

[2] According to s. 127 of the Bankruptcy Act 1967, only an adjournment of not exceeding one month is allowed. It does not matter whether all the parties agreed to any further adjournments; no such adjournments should be allowed. The only exception to this is when a judgment debtor gives notice to challenge the petition itself. In the present appeal, the judgment debtor did not give notice to challenge the petition at the beginning when the bankruptcy notice was served on him. He only challenged the petition at the time just before the petition was heard by the SAR. There was therefore no reason for the delay in this case.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Pada 5 Ogos 1993, responden/penghutang penghakiman telah berhutang kepada perayu/pemiutang mempetisyen jumlah sebanyak RM55,211.37. Jumlah ini berbangkit daripada suatu penghakiman persetujuan yang dimasukkan pada 22 Jun 1992. Pemiutang mempetisyen telah mengambil suatu notis kebangkrapan ('notis') dan telah menyerahkannya kepada penghutang penghakiman pada 28 September 1993. Dalam notis tersebut telah dinyatakan bahawa penghutang penghakiman telah berhutang kepada pemiutang mempetisyen jumlah sebanyak RM55,211.37. Walau bagaimanapun petisyen tersebut telah tidak didengarkan dalam tempoh masa yang diperuntukkan dalam s. 127 Akta Kebangkrapan 1967 – sebab kelewatan tersebut adalah kerana pihak-pihak masih sedang berunding.

Sebelum pendengaran yang sebenarnya petisyen tersebut di hadapan Penolong Kanan Pendaftar ('PKP') telah diadakan, penghutang penghakiman telah memfailkan afidavit untuk membantah petisyen tersebut dengan menuntut bahawa dia adalah solven. Ketika petisyen tersebut akhirnya telah didengarkan di hadapan PKP, penghutang penghakiman telah mengemukakan dua draf bank untuk jumlah sebanyak RM55,211.37 yang merupakan jumlah yang dinyatakan dalam notis. Pemiutang mempetisyen telah enggan menerima draf bank dengan menyatakan bahawa pada masa itu, ketika draf bank telah dikemukakan, jumlah hutang yang harus dibayar di bawah notis tersebut telah bertambah berdasarkan faedah yang belum dibayar dan oleh kerana itu jumlah yang harus dibayar pada tarikh draf dikemukakan adalah RM99,797.89. PKP telah menolak petisyen tersebut atas dasar bahawa penghutang penghakiman tersebut adalah solven. Atas rayuan kepada Mahkamah Tinggi, hakim telah mengesahkan keputusan PKP. Maka rayuan ini.

Isu-isu untuk dipertimbangkan adalah: (i) samada penghutang penghakiman adalah solven; dan (ii) berkenaan dengan kelewatan dua tahun di antara masa notis tersebut diserahkan dan ketika petisyen tersebut didengarkan.

Diputuskan:
Oleh Mokhtar Sidin HMR

[1] Notis kebangkrapan mesti ditentukan dan dinyatakan jumlahnya - sebabnya adalah bahawa penghutang penghakiman mesti diberi peluang untuk mengumpul jumlah tersebut dalam tempoh masa yang dinyatakan dalam notis. Jikalau penghutang penghakiman tidak dapat menyelesaikan sepenuhnya jumlah yang dinyatakan dalam notis tersebut, maka dia telah melakukan suatu tindakan kebangkrapan. Jikalau dia mengemukakan sepenuhnya jumlah seperti yang dinyatakan dalam notis tersebut, pemiutang mempetisyen adalah wajib menerima jumlah tersebut sebagai penyelesaian sepenuhnya yang terhutang di bawah notis tersebut dan pemiutang mempetisyen tidak boleh mempetisyen untuk perintah penerimaan. Jikalau pemuitang mempetisyen enggan menerima jumlah tersebut, dia melakukannya dengan risikonya sendiri.

[2] Ketika penghutang penghakiman telah mengemukakan draf bank yang terjumlah kepada RM55,211.37 yang merupakan jumlah yang dinyatakan dalam notis tersebut pada masa itu, maka jumlah dalam notis tersebut telah diselesaikan. Pemiutang mempetisyen tidak berhak menolak penerimaan draf bank oleh kerana jumlah sepenuhnya dalam notis tersebut telahpun dikemukakan. Bayaran tersebut telah membuktikan bahawa penghutang penghakiman adalah solven. Tidak kira samada pemiutang mempetisyen telah menerimanya tetapi kewajipan pada pihak penghutang penghakiman

di bawah notis tersebut telah dipenuhi dan dia telah tidak melakukan tindakan kebangkrapan. Oleh kerana dia telah tidak melakukan tindakan kebangkrapan, tidak ada hak yang diberi kepada pemiutang mempetisyen untuk mengemukakan petisyen untuk perintah penerimaan.

[3] Jikalau pemiutang ingin memohon jumlah yang lebih tinggi daripada yang ternyata dalam notis tersebut, notis tersebut harus ditarikbalik dan difailkan notis yang baru yang menyatakan jumlah baru dan diserahkannya kepada penghutang penghakiman. Dengan melakukan sedemikian, penghutang penghakiman terpaksa menyelesaikan jumlah baru dalam notis baru. Sehingga itu dilakukan, jumlah yang harus dibayar oleh penghutang penghakiman adalah jumlah dalam notis, iaitu RM55,211.37 – yang telah dikemukakan oleh penghutang penghakiman melalui dua draf bank.

Per curiam:

[1] Setelah notis diserahkan ke atas penghutang penghakiman, tidak harus berlakunya apa-apa rundingan lagi. Prosiding kebangkrapan adalah cara akhir yang terbuka kepada pemiutang kerana cara-cara yang lain untuk mendapat kembali hutang telah tertutup. Maka tidak patut berlakunya rundingan lagi. Sebaik sahaja notis tersebut diserahkan, samada penghutang penghakiman membayar jumlah yang ternyata dalam notis tersebut ataupun ianya akan menghadapi akibat dijadikan seorang bankrap.

[2] Berdasarkan s. 127 Akta Kebangkrapan 1967, hanya penundaan yang tidak melebihi satu bulan dibenarkan. Tidak kira samada kesemua pihak telah bersetuju kepada penundaan selanjutnya, tidak harus dibenarkan penundaan seperti itu. Suatu pengecualian kepada peraturan tersebut adalah ketika penghutang penghakiman memberikan notis untuk mencabar petisyen tersebut. Dalam rayuan ini penghutang penghakiman telah tidak memberikan notis untuk mencabar petisyen pada permulaannya ketika notis kebangkrapan diserahkan ke atasnya. Dia hanya mencabarkannya sebelum sahaja petisyen tersebut didengarkan oleh PKP. Maka tidak ada sebab untuk kelewatan dalam kes ini.

[Rayuan ditolak.]

Cases referred to:

Ghazali Mat Noor v. Southern Bank Bhd & Four Other Appeals [1989] 2 CLJ 380 ***(foll)***

Low Mun v. Chung Khiaw Bank Ltd [1987] 2 CLJ 400 ***(foll)***

Legislation referred to:
Bankruptcy Act 1967, ss. 3(1), 127

For the appellant - Yoong Sin Min (Lau May Ling with her); M/s Shook Lin & Bok
For the respondent - VS Viswanathan; M/s TH Su & Co

[Appeal from High Court, Ipoh; Bankruptcy No: 29-603-1993]

Reported by Mariette Peters-Goh

JUDGMENT

Mokhtar Sidin JCA:

We have dismissed the appeal earlier and now we give our reasons for doing so.

In this appeal the appellant/petitioning creditor (hereinafter referred to as the petitioning creditor) petitions the court that a receiving order may be made in respect of the estate of Sethu a/l Ambalagara Thevar (hereinafter referred to as the judgment debtor) and an adjudication order be made against the judgment debtor. There was no dispute that as at 5 August 1993 the said judgment debtor owed the petitioning creditor the sum of RM55,211.37. This sum arose from a consent judgment entered on 22 June 1992 providing for interest at 18 percent per annum on monthly basis and also delinquent charge at one percent on the total minimum payment, as stipulated in the judgment debtor's monthly statement of account. The petitioning creditor took out a bankruptcy notice and served it on the judgment debtor on 28 September 1993. In that bankruptcy notice it was stated that the judgment debtor owed the petitioning creditor the sum of RM55,211.37. For reasons best known to the parties the petition was not heard within the time as provided for by the Bankruptcy Act. We will comment on this later in our judgment.

Before the actual hearing of the petition before the Senior Assistant Registrar the judgment debtor filed an affidavit to oppose the petition claiming that he was solvent and adducing evidence that he owned land to the value of RM9,227.755. When the petition finally came up for hearing before the Senior Assistant Registrar, the judgment debtor tendered two banker's drafts for the total sum of RM55,211.37. This was the amount stated in the bankruptcy notice. The petitioning creditor refused to accept the banker's drafts stating that at the time when the banker's drafts were tendered the amount of the debt due under the bankruptcy notice had been inflated due to the non-payment of the interest and as such the amount due on the date when the banker's drafts were tendered was RM99,797.89.

The Senior Assistant Registrar dismissed the petition on the ground that the judgment debtor was solvent. On appeal to the High Court judge, the learned judge also found that the judgment debtor was solvent. The learned judge in his judgment stated that there were evidence to show that the judgment debtor owned assets amounting to more than RM9,227,755 and the petitioning creditor had not shown any evidence to the contrary. The learned judge dismissed the appeal by the petitioning creditor. Being dissatisfied with that decision, the petitioning creditor now appeal to us. Hence the present appeal before us.

Before us both parties argued on the assumption that the main and only issue to be decided was whether the judgment debtor was solvent because of the value of his assets. Both counsel went at great length to satisfy us that the judgment debtor had sufficient assets to satisfy the debt to show that he is solvent. We agree that the question of solvency is important at the time when the act of bankruptcy was committed. In our view for the purpose of this appeal there is no necessity to find out whether the judgment debtor had assets more than the amount stated in the bankruptcy notice or the amount claimed by the petitioning creditor at the time of the hearing of the petition. It appears to us that when the judgment debtor tendered the two banker's drafts amounting to RM55,211.37 which was the sum stated in the bankruptcy notice then the sum in the notice had been satisfied. The petitioning creditor had no right to refuse to accept those banker's drafts since the full amount in the notice had been tendered. That payment also proved that the judgment debtor was solvent. For that reason we would like to refer to s. 3(1) of the Bankruptcy Act:

> 3(1) A debtor commits an Act of bankruptcy in each of the following cases:
>
> (i) if a creditor has obtained a final judgment or final order against him for any amount and execution thereon not having been stayed has served on him in Malaysia, or by leave of the court elsewhere, *a bankruptcy notice under this Act requiring him to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order with interest quantified the date of issue of the bankruptcy notice or to secure or compound for it to the satisfaction of the creditor or the court;* and he does not within seven days after service of the notice in case the service is effected in Malaysia, and in case the service is effected elsewhere then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counterclaim, set off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid and which he could not set up in the action in which the judgment was obtained or in the proceedings in which the order was obtained:

> Provided that for the purposes of this paragraph and of section 5 any person who is for the time being entitled to enforce a final judgment or final order shall be deemed to be a creditor who has obtained a final judgment or final order; (Emphasis is ours)

We are of the view that the bankruptcy notice is important and the key to the whole of the proceedings for bankruptcy. The bankruptcy notice served on the judgment debtor was a notice to him that he owed the petitioning creditor the amount stated in the notice. That amount must be settled within seven days after the notice had been served on him. If he failed to do so then he had committed an act of bankruptcy. As such it is important that the notice must specify the amount due. It was so decided by the Supreme Court in the case of *Ghazali bin Mat Noor v. Southern Bank Berhad and four other appeals* [1989] 2 MLJ 142 where it was held that:

> (1) *For a bankruptcy notice to be valid it should state the exact amount due at the date of the bankruptcy notice. The judgment debtor must know the exact amount he has to pay to avoid bankruptcy.* He does not have to make calculations or enquiries.
>
> (2) In the present appeals, as the interest sums payable have not been quantified, the bankruptcy notice in all five cases are invalid *ab initio* and consequently all subsequent proceedings to these bankruptcy notices are a nullity. (Emphasis is ours).

This decision followed an earlier decision of the Supreme Court in the case of *Low Mun v. Chung Khiaw Bank Ltd.* [1988] 1 MLJ 263 where it was held that:

> (2) *by demanding payment for unspecified sums in the bankruptcy notice, such demand is not in accordance with the terms of the judgment and applying the rule of strict construction the notice cannot be deemed to fall within section 3(1)(i) of the Bankruptcy Act. The amount must be quantified because the debtor is entitled to know from the bankruptcy notice exactly what is being claimed to be due on the whole judgment debt and payable by him within the seven-day period.* Non-compliance with the terms of the judgment renders the bankruptcy notice invalid, and failure to comply with such a notice is not an act of bankruptcy and a bankruptcy petition founded on it must necessarily fail;
>
> (3) it cannot be disputed that the whole of the judgment for the repayment of the principal sum of the loan, interest and costs, on which the bankruptcy notice was founded, did not exist as a debt available for bankruptcy purposes at the time of the alleged act of bankruptcy and that being the case, the bankruptcy notice was a nullity *ab initio* and the appellant is entitled to succeed. (Emphasis is ours).

Mohd Azmi SCJ (as he then was) at p. 265 said:

> It is also essential that at the time of issue of the bankruptcy notice, the judgment creditor must be in the position to issue execution – see *In re Woodall, ex parte Woodall.* If part of the debt has been paid or unenforceable in bankruptcy, the notice can only be issued for the balance – see *Re A Debtor.* Thus, a bankruptcy notice can only be issued for the judgment debt or that part of the debt on which the creditor can issue execution. In the present case, as at the date of issue of the bankruptcy notice, only in respect of that part of the judgment debt of $2,325,000.00 the creditor could have issued execution. The remaining parts of the judgment debt on the interest on the loan and the costs of proceedings had not been quantified in accordance with the terms of the judgment, and hence these parts of the judgment debt were then incapable of being the subject of execution. *In our view, the demand for payment of interest and costs was wrongly included in the bankruptcy notice because it was only after the issue of the notice ie, when the creditor's petition was issued on January 6, 1986* that the creditor was able to ascertain the base lending rate of "10.25%" per annum, and also to quantify the costs at $9,880.50 after taxation. Clearly the bankruptcy notice was bad in law as it contained demand for payment of the whole judgment debt within seven days when parts of the whole debt had not been or could not be quantified, and as such were incapable of being made the subject of execution, and consequently incapable of being complied with. Non-compliance with the demand to pay such unascertained sums cannot constitute an act of bankruptcy. *The demand of repayment in the notice must not only be quantified but must also be the correct sum owing as at the date of the notice.* In the circumstances, the bankruptcy notice should have made it clear that the demand for payment was limited only to the principal sum of $2.325 million, or both the interest and the costs should have been left out altogether and when their amounts had been ascertained, they could, before adjudication, be made the subject of a separate bankruptcy notice. Alternatively, both the interest and the costs should be quantified first before notice was issued on the whole judgment debt. In any event, any balance of a judgment debt, including interest and costs not demanded in the notice, could subsequently be proved in bankruptcy to the Official Assignee under Part III of the Bankruptcy Act. (Emphasis is ours).

At p. 266 his Lordship went on to say:

> "... The Bankruptcy Act provides expressly that the notice must be to pay the judgment debt in accordance with the terms of the judgment". Thus *In re H.B.*, a bankruptcy notice was held to be bad if founded not according to its terms but on some agreement which modified the terms of the judgment, and therefore not in accordance with the terms of the judgment. Consequently, we are of the view that when you have the judgment in the usual form that we have here, *a bankruptcy notice under the Act must require payment of quantified sum or sums alleged to be due according to the terms of the judgment as at the date of issue of bankruptcy notice.* The duty is on the

> creditor to state the correct amount due, and there is no obligation imposed on the debtor to make inquiries if the amount demanded is ambiguous or unascertained. By demanding payment for unspecified sums in the bankruptcy notice, we hold that such demand is not in accordance with the terms of the judgment, and applying the rule of strict construction, the notice cannot be deemed to fall within section 3(1)(i) of the Bankruptcy Act. *The amount must be quantified because the debtor is entitled to know from the bankruptcy notice exactly what is being claimed to be due on the whole judgment debt and payable by him within the seven-day period.* Non-compliance with the terms of the judgment renders the bankruptcy notice invalid, and that failure to comply with such notice is not an act of bankruptcy, and a bankruptcy petition founded on it must necessarily fail. ... (Emphasis is ours)

From the above it is clear to us that the amount in the bankruptcy notice must be quantified and specified. The reason is that the judgment debtor must be given the opportunity to raise that sum within the period stipulated in the bankruptcy notice. In our view if the judgment debtor is able to settle the full amount stated in the bankruptcy notice he has not committed an act of bankruptcy. If he tenders the full amount as stated in the bankruptcy notice the petitioning creditor is obliged to accept that amount as full settlement of the sum owing under the said bankruptcy notice and the petitioning creditor could not petition for a receiving order. If the petitioning creditor refuses to accept the amount he does so at his own peril. In our view the payment of the full amount as stated in the bankruptcy notice is the best evidence that the judgment debtor is solvent. Thus in the present appeal when the judgment debtor tendered the two banker's drafts for the full amount in the bankruptcy notice (which was not disputed by the appellant (petitioning creditor)) the judgment debtor had satisfied the court that he was solvent. It does not matter whether the petitioning creditor accepted them or not but the obligation on the part of the judgment debtor under that bankruptcy notice had been met and he had not committed an act of bankruptcy. Since he had not committed an act of bankruptcy there was no right given to the petitioning creditor to present the petition for receiving order. In our view the right to present the petition only arise once an act of bankruptcy has been committed.

The petitioning creditor explained that it refused to accept the two banker's drafts because the amount in the bankruptcy notice was not the total amount due from the judgment debtor any more. It is not disputed that some two years had already passed from the time when the bankruptcy notice was served on the judgment debtor to the time when the two banker's drafts were presented. Because of the two year period the amount of interest on the judgment debt had accumulated and as on the date when the banker's drafts were presented the total sum due was RM99,797.89. We are not denying that the petitioning creditor is entitled to that amount but the question before us is what was the

amount due under the bankruptcy notice in order to start the whole machinery of bankruptcy against the judgment debtor. As far as we are concerned the amount in the bankruptcy notice was the amount in the two banker's drafts. If the petitioning creditor (appellant) wanted a figure higher than the one in the notice it should have withdrawn the bankruptcy notice and file a new bankruptcy notice stating the new amount and serve it on the judgment debtor. By doing so the judgment debtor has to settle the new amount as in the new notice. Until that is done the amount due from the judgment debtor was the amount in the notice, that was RM55,211.37 and that amount was tendered by the judgment debtor through the two banker's drafts.

Counsel for both parties admitted there was a delay of two years from the time the bankruptcy notice was served to the time when the petition was heard. The reason given was that there were negotiations between the parties. We were of the view after the bankruptcy notice had been served on the judgment debtor no negotiation whatsoever should take place anymore. We are of the opinion a bankruptcy proceeding is the final resort open to a creditor because all other avenues to recover the debt had been closed. Hence no negotiation should take place. Once the bankruptcy notice is served, either the judgment debtor pay the amount in the notice in full or face the consequences of being made a bankrupt. That is why in its wisdom the Act provides that the petition must be heard promptly and s. 127 of the Bankruptcy Act provides for that. Section 127 provides as follows:

> 127. **Adjournments of hearing**
>
> **After the expiration of one month from the day appointed for the first hearing of a petition** (provided such petition shall have been duly served) **no further adjournment of the hearing merely by consent of the parties shall be allowed** unless the debtor has given prior notice that he intends to show cause against the petition; **but in every such case unless an order for adjournment is made the court shall either make a receiving order or dismiss the petition.** (Emphasis is ours).

As can be seen from the above only an adjournment of not exceeding one month is allowed. It does not matter whether all the parties agreed to further adjournments, no further adjournments should be allowed. The only exception to this is when the judgment debtor gives notice to challenge the petition itself. In the present appeal the judgment debtor did not give the notice to challenge the petition at the beginning when the bankruptcy notice was served on him. He only challenged the petition at the time just before the petition was heard by the Senior Assistant Registrar. We see no reason why there must be a delay in this case. In our view if s. 127 has been followed strictly we are sure that the problems faced by the petitioning creditor would not arise for the simple reason that an adjournment of one month will not alter the amount in the notice very much.

We would like to stress here that courts below should take note of s. 127 of the Bankruptcy Act. It should be adhered to strictly and an adjournment of not exceeding one month be allowed only once. In our view, an adjournment is not really necessary because the proceedings have reached the last and final stage. If a judgment debtor is unable to pay the amount stated in the bankruptcy notice he should be made a bankrupt without further ado.

Thus in the present appeal, when the judgment debtor tendered the two bank drafts for the full amount in the bankruptcy notice he had done the obligations imposed upon him by the bankruptcy notice and the Bankruptcy Act. As such he had tendered the full amount due from him under the bankruptcy notice which showed that he was solvent. He should not be made a bankrupt and it did not matter whether the petitioning creditor refused to accept the bank drafts or not.

We are in agreement with the Senior Assistant Registrar and the learned judge that the petition be dismissed but for different reasons. We are of the view that when the judgment debtor tendered the two banker's drafts that was ample and sufficient evidence to show that the judgment debtor was solvent without going into the personal assets of the judgment debtor as the learned judge and the Senior Assistant Registrar had done.

For the above reasons we dismissed the appeal with costs.